

5-39. State Primary Enforcement Responsibility under FIFRA

1. **AUTHORITY.** To perform the functions and responsibilities under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) relative to:
 - a. Making general determinations about states' pesticide use laws and plans pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), including the determinations referenced in Sections 26(a) and (b).
 - b. Executing primary enforcement responsibility for pesticide use violations in states that do not have primary enforcement responsibility for pesticide use violations, in accordance with FIFRA, including Section 26(c).
 - c. Referring any complaint or other information to the appropriate state officials for investigation, and acting upon the complaint or information if authorized, pursuant to the authority in FIFRA, including Section 27(a).
 - d. Making the determination that EPA should execute primary enforcement responsibility for any FIFRA violations where emergency conditions exist that require immediate action and the state authority is unwilling or unable adequately to respond to the emergency, in accordance with the authority in FIFRA, including Section 27(c).
 - e. Making a determination to rescind, and providing, withdrawing, reissuing, modifying and publishing notice of intent to rescind state primary enforcement responsibility for pesticide use violations in accordance with FIFRA, including FIFRA Section 27(b) and 40 C.F.R. part 173.
 - f. Scheduling a hearing, appointing a presiding officer to preside over such hearing and to make a recommended decision, and prescribing additional procedures governing the conduct of the hearing after consultation with the State, as authorized by FIFRA, including 40 C.F.R. part 173.

2. TO WHOM DELEGATED.

- a. The authorities stated above in sections 1(a), 1(b), 1(c), and 1(d) are delegated to the chief, Pesticides and Asbestos Programs Branch, Land and Chemicals Division (LCD).
- b. The authorities in 1(e) and 1(f) are delegated to the director, Land and Chemicals Division (LCD).

3. LIMITATIONS.

- a. Prior to exercising the authorities in sections 1(a), 1(b), 1(c), and 1(d) above, the AA for OECA must notify the affected RA.

- b. Prior to exercising the authorities in 1(e) and 1(f) above, the delegatee must obtain concurrence from the AA for OECA.
- c. The delegates must obtain the advanced concurrence of the Regional Counsel prior to exercising the authorities in 1.a., 1.d., 1.e., and 1.f.


4. REDELEGATION AUTHORITY.

- a. The authorities stated above in sections 1(a), 1(b), 1(c), and 1(d) may be redelegated to the branch chief level, and no further.
- b. The authorities stated above in sections 1(e), and 1(f) may be redelegated to the associate director level and no further.
- c. These authorities may not be redelegated without formal amendment.
- d. An official who redelegates an authority retains the right to exercise or withdraw the authority. Redelegated authority may be exercised by any official in the chain of command down to the official to whom it has been specifically redelegated.

2. ADDITIONAL REFERENCES.

- a. FIFRA sections 26 and 27.
- b. 40 C.F.R. part 173, Procedures Governing the Rescission of State Primary Enforcement Responsibility for Pesticide Use Violations.
- c. 48 Fed. Reg. 404 (Jan. 5, 1983), Federal Insecticide, Fungicide, and Rodenticide Act, State Primary Enforcement Responsibilities (Final Interpretive Rule).

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